United States Department of Labor
Employees' Compensation Appeals Board

K.B., Appellant	)	
and	)	**Docket No. 17-0682**
	)	**Issued: July 24, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Towson, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 6, 2017 appellant, through counsel, filed a timely appeal from a November 10, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective March 15, 2016 as she had no further disability or

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

residuals causally related to her December 14, 2014 employment injury; and (2) whether appellant has established continuing employment-related disability after March 15, 2016.

FACTUAL HISTORY

On December 18, 2014 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 14, 2014 she sprained her left ankle and leg in the performance of duty. OWCP accepted the claim for a left ankle sprain. Appellant stopped work on December 15, 2014 and returned to part-time modified employment on March 6, 2015. She again stopped work in November 2015 and received disability compensation from OWCP.[3]

Appellant underwent electrodiagnostic testing on January 19, 2015 which revealed left peroneal neuropathy at the fibular head. A March 25, 2015 magnetic resonance imaging (MRI) scan demonstrated a grade 1 strain of the anterior talofibular and calcaneofibular ligaments, a mild strain in the distal muscles fibers of the gastrocnemius and soleus, and minimal "soft tissue edema in the Kager's fat pad, retro-Achilles soft tissue, medial and lateral aspect of the ankle, [and] sinus tarsi as well as [the] lateral aspect of the hind foot."

In a September 4, 2015 report, Dr. Noman Siddiqui, a podiatrist, evaluated appellant for a left ankle condition following a December 14, 2014 injury at work. He noted that she was currently restricted to sedentary duties. Dr. Siddiqui diagnosed possible common peroneal nerve neuropathy of the left ankle, an anterior talofibular ligament (ATFL) sprain of the left ankle, chronic left ankle instability, and chronic left ankle pain. He advised that it was "a little concerning that [appellant] is disabled to this degree after a, what appears to be, at least, per the MRI [scan study] findings, a mild sprain." Dr. Siddiqui referred appellant for physical therapy.

On October 30, 2015 Dr. Siddiqui diagnosed possible common peroneal nerve neuropathy of the left ankle, an ATFL sprain of the left ankle, chronic left ankle instability, and chronic left ankle pain. He recommended an MRI scan study.

In a form report dated November 5, 2015, Dr. Siddiqui provided the history of injury as appellant experiencing a "pop" in her left ankle delivering mail on December 14, 2014. He diagnosed an ATFL sprain of the left ankle, chronic left ankle instability and pain, and possible common peroneal neuropathy of the left ankle. Dr. Siddiqui checked a box marked "yes" that the condition was caused or aggravated by employment as "according to [appellant] she was working when her injury occurred." He advised that appellant could perform limited-duty employment, but was unable to work with her boot. Dr. Siddiqui recommended that she not work until after an MRI scan study. In a November 6, 2015 note, he diagnosed an ATFL and calcaneofibular ligament (CFL) sprain and found that appellant needed to wear a walking boot due to "her current chronic ankle instability."

On January 4, 2016 OWCP referred appellant to Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated January 22,

[3] In a decision dated September 28, 2015, OWCP denied appellant's claim for medical treatment from March 7 to 20, 2015 as the medical evidence was insufficient to show that the medical care was due to her accepted work injury.

2016, Dr. Thompson discussed her December 14, 2014 left ankle injury and subsequent medical treatment. On examination of the left ankle, he found no loss of motion, redness, edema, or increased warmth. Dr. Thompson further found no loss of strength or sensation and noted that diagnostic studies did not reveal "any specific pathology related to [appellant's] left foot or ankle." He diagnosed a left ankle sprain with "no objective evidence of any ongoing pathology that would indicate the need for any continued formal medical care or any additional diagnostic testing." Dr. Thompson opined that appellant had no residuals of her December 14, 2014 work injury to the left foot or ankle and that she could return to her usual employment without restrictions. In an accompanying work capacity evaluation (OWCP-5c), he found that she could perform her regular employment with no limitations.

OWCP, by letter dated February 1, 2016, notified appellant of its proposed termination of her wage-loss compensation and medical benefits. It advised her that the weight of the medical evidence, as represented by the opinion of Dr. Thompson, established that she had no residuals of her accepted work injury.

On March 9, 2016 appellant submitted an October 22, 2015 emergency room report indicating that she received treatment by Dr. Dan Morhaim, a Board-certified internist, for left ankle pain and swelling. Dr. Morhaim obtained a history of her sustaining an injury one year ago at work with symptoms varying in degree. He found that appellant should remain off work until October 27, 2015.

By decision dated March 15, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date as the weight of the medical evidence demonstrated that she had no further employment-related disability or need for medical treatment.

Subsequent to OWCP's March 15, 2016 termination, appellant submitted a February 11, 2016 report from Dr. Siddiqui. Dr. Siddiqui noted that she had a second opinion examination with Dr. Thompson. He advised, "[Appellant] relates that after the evaluation that she was told that she is able to work, however, [she] states that she is still unable to work and she still has continued pain in her ankle." On examination Dr. Siddiqui found no edema, erythema, or ecchymosis, intact sensation, and pain with anterior drawer and talar tilt. He diagnosed continued left ankle pain and ruled out a ligamentous disruption or osteochondral ankle injury. Dr. Siddiqui related, "I do agree with Dr. Thompson that [appellant] does not have warmth, redness, or swelling in the ankle; however, my opinion is [she] does not have free range of motion of the ankle as it is difficult to evaluate given her guarding. She does not reveal 5/5 strength in her ankle because of the guarding noted." He found that appellant could not perform all the duties of her employment and might have an osteochondral injury due to her ankle sprain. Dr. Siddiqui recommended additional diagnostic testing or an additional evaluation.

On May 19, 2016 Dr. Siddiqui reviewed the March 2015 MRI scan study. He noted that the quality of the MRI scan was poor and he could not "fully evaluate the ATFL and CFL ligaments" but that there was increased fluid at the ATFL ligament. Dr. Siddiqui diagnosed continued left ankle pain, a possible disruption of the ATFL and CFL ligaments, a low-lying peroneal muscle belly with lateral displacement of the peroneal tendons of the left ankle, and a convex fibular groove of the left ankle. He recommended a new MRI scan and opined that

appellant could not perform her usual employment based on "the clinical findings and some of the diagnostic findings…."

Appellant, through counsel, on August 12, 2016 requested reconsideration. Dr. Siddiqui, on August 12, 2016, advised that she had not reached maximum medical improvement. He recommended surgery to repair the ATFL, peroneal muscle, and fibular groove, and an ablation of the peroneal tendon. Dr. Siddiqui indicated on an accompanying work restriction form that appellant should be off work.

In a progress report dated August 23, 2016, Dr. Amanda Walsh, a podiatrist, and Dr. Siddiqui noted that appellant had experienced left ankle pain for almost two years following a work injury. On examination the podiatrists found minimal ATFL edema and pain on palpation. Dr. Siddiqui diagnosed an ATFL tear, a left low-lying peroneal muscle belly with displacement of the left peroneal tendon, and a left convex fibular groove. The podiatrists recommended surgery to repair the ATFL tear.

Dr. Siddiqui, on September 20, 2016, advised that he had treated appellant for about two years for an ATFL tear of the left ankle. In a work capacity evaluation dated September 20, 2016, he provided work restrictions. In a November 8, 2016 progress report, Dr. Siddiqui found that appellant should not return to work until after surgery.

By decision dated November 10, 2016, OWCP denied modification of its March 15, 2016 decision. It found that the reports from Dr. Siddiqui were insufficient to show that appellant had further residuals of her accepted left ankle sprain, noting that he treated her for multiple ankle conditions that it had not accepted as employment related.

On appeal counsel contends that OWCP erred in failing to develop whether the claim should be expanded to include additional conditions.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[4] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[6] To terminate authorization for medical treatment,

[4] *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[5] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[6] *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[7]

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained a left ankle sprain due to a December 14, 2014 employment injury. Appellant stopped work on December 15, 2014, returned to part-time modified work on March 6, 2015 and stopped work again in November 2015. OWCP paid disability compensation and medical benefits.

In support of her claim, appellant provided evidence from Dr. Siddiqui. In his September 4, 2015 report, Dr. Siddiqui discussed her history of a December 14, 2014 left ankle injury and noted that she currently worked limited duty. He diagnosed possible left ankle peroneal nerve neuropathy, an ATFL sprain, and chronic left ankle instability and pain. Dr. Siddiqui noted that an MRI scan indicated a mild sprain and questioned why this resulted in the amount of disability experienced by appellant. In a November 5, 2015 form report, he diagnosed an ATFL sprain, possible peroneal neuropathy of the left ankle, and chronic pain and instability of the left ankle. Dr. Siddiqui checked a box marked "yes" that the condition was caused or aggravated by employment as appellant had reported that she was at work when she sustained the injury. He found that she should remain off work pending an MRI scan study. Dr. Siddiqui discussed appellant's belief that the condition was work related, but he did not otherwise provide an independent causation finding.[8] A physician's report is of little probative value when it is based on a claimant's belief rather than the physician's independent judgment.[9]

On January 4, 2016 OWCP referred appellant to Dr. Thompson for a second opinion examination. In the report dated January 22, 2016, Dr. Thompson reviewed the history of injury and medical treatment received. On examination he found no reduced motion, swelling, redness, or loss of sensation or strength. Dr. Thompson noted that objective studies found no specific left ankle pathology. He opined that appellant had no further objective findings of her left ankle sprain. Dr. Thompson provided a thorough review of the factual and medical background and accurately summarized the relevant medical evidence. Moreover, he provided detailed findings on examination and reached conclusions regarding appellant's condition which comported with his findings.[10] The Board thus finds that OWCP met its burden of proof to terminate her wage-loss compensation and medical benefits based on the opinion of Dr. Thompson, who determined that she had no further disability or residuals due to her accepted employment injury.[11]

[7] *Id*.

[8] *Deborah L. Beatty*, 54 ECAB 334 (2003) (the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship).

[9] *Earl David Seale*, 49 ECAB 152 (1997).

[10] *See Pamela K. Guesford*, *supra* note 6.

[11] *See A.W.*, Docket No. 16-0780 (issued October 11, 2016).

The remaining evidence of record submitted prior to OWCP's termination of wage-loss compensation is insufficient to show that appellant had disability due to her employment injury. She submitted an October 22, 2015 emergency room report from Dr. Morhaim finding that she should not work until October 27, 2015. As this evidence predated OWCP's termination of compensation, it is of little probative value regarding the relevant issue of disability after March 15, 2016.[12]

LEGAL PRECEDENT -- ISSUE 2

Once OWCP properly terminates a claimant's compensation benefits, the burden shifts to him or her to establish continuing employment-related residuals after that date related to the accepted injury.[13] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, he or she must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.[14] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[15]

ANALYSIS -- ISSUE 2

As OWCP properly relied upon the opinion of Dr. Thompson in terminating compensation benefits, the burden of proof shifted to appellant to establish that she remains entitled to compensation after that date.[16]

In his report dated February 11, 2016, Dr. Siddiqui discussed appellant's belief that she was not able to work due to ankle pain. He found no swelling, erythema, loss of sensation, or ecchymosis on examination, but pain with an anterior drawer and talar tilt. Dr. Siddiqui advised that he concurred with Dr. Thompson's findings of no swelling, warmth, or redness on examination, but found that appellant did not have full ankle motion or strength due to guarding. He diagnosed left ankle pain and ruled out a ligamentous disruption or osteochondral injury. Dr. Siddiqui opined that appellant could not return to regular employment. He did not, however, provide a firm diagnosis or fully explain the mechanics of how the accepted work injury continued to cause disability or residuals. Without a firm diagnosis supported by medical rationale, the report is of little probative value.[17]

Dr. Siddiqui, on May 19, 2016, discussed the findings on MRI scan study of increased fluid at the ATFL ligament. He diagnosed left ankle pain, a possible disruption of the ATFL and

[12] *See D.M.*, Docket No. 16-1893 (issued March 21, 2017).

[13] *Manual Gill*, 52 ECAB 282 (2001).

[14] *Id*.

[15] *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[16] *See supra* note 13.

[17] *See Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

CFL, lateral displacement of the peroneal tendons of the ankle, and a convex fibular groove of the left ankle. Dr. Siddiqui opined that appellant should not work pending further diagnostic evaluation. On August 12, 2016 he recommended surgery to repair the ATFL, peroneal muscle, and fibular groove and found that she could not work until after surgery. Dr. Siddiqui and Dr. Walsh provided the same diagnosis and surgical recommendations on August 23, 2016. He listed work restrictions on September 20, 2016 and opined on November 8, 2016 that appellant could not work pending surgery. OWCP, however, accepted only left ankle sprain as causally related to the December 14, 2014 work injury. Where appellant claims that a condition not accepted or approved was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.[18] Dr. Siddiqui did not provide any rationale for his opinion that the work injury resulted in disruption of the ATFL, peroneal muscle, and fibular groove. Medical conclusions unsupported by rationale are of little probative value.[19]

On appeal counsel argues that OWCP should have developed the claim to determine whether appellant sustained additional conditions. However, this matter is not before the Board as OWCP has not issued a decision addressing whether the claim should be expanded.[20]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective March 15, 2016 as she had no further disability or residuals causally related to her December 14, 2014 employment injury. The Board further finds that she has not established any continuing employment-related disability after March 15, 2016.

[18] *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[19] *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

[20] *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board